

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

**CA 99/2011**

High Court Puttalam Case No. 160/2006

Abdul Jaleel Mohomed Naufar  
Pulachchena,  
Norochchola.

**Appellant**

**Vs.**

Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondent**

C.A. No. 99/2011

H.C. Puttalam No. HC.160/2006

BEFORE : SISIRA DE ABREW, J. &  
SUNIL RAJAPAKSHE, J.  
COUNSEL : Anil Silva with Lasitha Muhamdirange for the  
accused-appellant.  
Rohantha Abeysuriya SSC for the respondent.  
ARGUED AND  
DECIDED ON : 08<sup>th</sup> November, 2012.

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**SISIRA DE ABREW, J.**

Accused-appellant is present in Court produced by the  
Prison Authorities.

Heard both Counsel in support of their respective cases. The  
accused in this case was convicted for raping a woman named  
Arumugam Saraswathi and was sentenced to a term of 5 years rigorous  
imprisonment, to pay a fine of Rs.25,000/= carrying a default sentence of  
06 months simple imprisonment and to pay a sum of Rs.50,000/= to the  
victim as compensation carrying a default sentence of 06 months simple  
imprisonment. Being aggrieved by the said conviction and the sentence

the accused-appellant has appealed to this Court. Facts of this case may be briefly summarized as follows:-

The victim Saraswathi at the time of the alleged rape was pregnant by her cousin named Kumar who is a married person. Although the prosecution alleges that she was raped, when we examined the evidence of the prosecutrix, we find that there is no clear evidence on penetration. Learned Senior State Counsel too admits that there is no clear evidence on penetration.

According to the prosecutrix she was raped by the accused-appellant without her consent. But prior to the alleged sexual intercourse by the accused-appellant in this case, she had had sexual intercourse with her cousin named Kumar for a period of 5 months on 20 to 30 times. According to her, she was raped by the accused-appellant without her consent. But she failed to disclose this fact to anybody. Although the first sexual intercourse with the accused-appellant was without her consent, thereafter she had sexual intercourse with the accused-appellant for four times without her consent. After she had sexual intercourse on all four occasions, she failed to disclose this matter to anybody. Rasiaiah Saraswathi who is the sister of the mother of the victim heard this incident from an uncle of the victim. When she did not take any action on the information received by the said uncle, the villagers of the village tried to assault her for not taking any action. As a

result of the said action by the people of the area, the said Rasaiah Saraswathi had to take the victim to the police station. These are the circumstances under which the victim made a statement to the police. We therefore note that the complaint was not made to the police station on her own. We further note that the complaint was made two months after the incident. The question that arises for consideration is if the sexual intercourse was committed on her by the accused-appellant without her consent as to why she did not bring this to the notice of any relation even after five times. We note that at the time of the alleged incident, she was pregnant. Her story has not been corroborated by medical evidence. When we consider all these matters, we are of the opinion that the prosecution has failed to prove beyond reasonable doubt that sexual intercourse was committed by the accused on the victim without her consent. When we consider the evidence led at the trial, we are of the opinion that the element of consent was there on the part of the prosecutrix. According to the evidence at the time of the incident the prosecutrix was above 16 years of age. When we consider the evidence of the prosecutrix it is relevant to consider the judgment in the case of **Sunil and another vs. Attorney General 1986 1 SLR page 230** Wherein His Lordship Justice Dheeraratne held that *"it is very dangerous to act on uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing such evidence could be acted on even in the absence or corroboration."* I have earlier stated that the

prosecution has not proved beyond reasonable doubt that the accused committed sexual intercourse on the prosecutrix without her consent. In these circumstances we hold that the charge of rape has not been established by the prosecution beyond reasonable doubt. We therefore, set aside the conviction and the sentence and acquit the accused of the offence of rape.

*Appeal allowed.*

JUDGE OF THE COURT OF APPEAL

SUNIL RAJAPAKSHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=